

U. S. Supreme Court, U. S.

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CHARLES ELMORE CROPLEY,
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

EXHIBIT SUPPLY COMPANY,
Petitioner.

vs.

ACE PATENTS CORPORATION,
Respondent.

No. 154.

GENCO, INC.,
Petitioner.

vs.

ACE PATENTS CORPORATION,
Respondent.

No. 155.

CHICAGO COIN MACHINE COMPANY,
Petitioner.

vs.

ACE PATENTS CORPORATION,
Respondent.

No. 156.

**REPLY TO BRIEF IN OPPOSITION TO RESPONDENT'S MOTION
TO DISMISS WRITS OF CERTIORARI.**

CASPER OOMS,
Attorney for Respondent.

JOHN A. RUSSELL,
Of Counsel.

November 19, 1941.

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No. 156.

**REPLY TO BRIEF IN OPPOSITION TO RESPONDENT'S MOTION
TO DISMISS WRITS OF CERTIORARI.**

I.

Petitioners urge this Court to disregard the Motion to Dismiss Writs of Certiorari granted herein on the ground that although said Writs were granted upon a Petition for Rehearing raising entirely new issues, Respondent might have resisted the Petition for Rehearing. The rules of this Court contain no provision for a reply to such Peti-

tion. Petitioners cite Rule 27 (4) which relates only to briefs upon the merits.

The fact remains that Petitioners by their Petition for Rehearing presented to this Court grounds for the Writs of Certiorari urged for the first time in that Petition, and only by the Motion to Dismiss the Writs of Certiorari is opportunity for reply afforded Respondent.

II.

Counsel for Petitioners seeks to excuse the belated presentation of the grounds upon which the Writs of Certiorari were herein sought in a Petition for Rehearing on the assertion that an advertisement of the Pacent Novelty Mfg. Company appeared in the record at page 397, and that Counsel did not learn that the Company had gone out of business in 1937 until October 24, 1941.*

The record does contain that advertisement but it also contains twelve specific references to that Company's having gone bankrupt and out of business in 1937: (See R. 165, 181, 213, 235, 237, 238, 242, 262, 290, 494, 503, and 513.)

The District Court specifically referred in its Findings in each case "to the failure of the Pacent Novelty Mfg. Company in the spring of 1937". (Finding 20, R. 494, 503, 513.)

Petitioners' withholding the presentation of this ground for the granting of Writs of Certiorari until the Petition for Rehearing appears a deliberate effort to prevent Respondent's reply thereto.

* "Affiant states that when the petition for writ of certiorari in these cases was originally prepared he was under the mistaken impression that the industry in question here was not concentrated in the Seventh Circuit; that this mistaken impression arose from the fact that an advertisement of the Pacent Novelty Mfg. Company of Utica, New York, appeared in the record at page 397;

That he was not advised that said Pacent Novelty Mfg. Co. had gone out of business so that the industry became concentrated in the Seventh Circuit until on or about October 24, 1941." (Affidavit of John H. Sutherland, Reply, p. 4.)

It is respectfully submitted that the Writs of Certiorari should be dismissed upon the grounds stated in the Motion to Dismiss.

Respectfully submitted,

CASPER OOMS,
Attorney for Respondent.

JOHN A. RUSSELL,
Of Counsel.

November 19, 1941.